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Docket No. 040722214-4214-01
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Import Administration, International Trade Admin., Department of Commerce

VIA HAND DELIVERY
Assistant Secretary for Import Administration
James J. Jochum
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Attn: Elizabeth C. Seastrum, Senior Counsel, Room 3628
Philip J. Curtin, Attorney-Advisor, Room 3628

Re: Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings

Dear Mr. Assistant Secretary:

On behalf of the undersigned attorneys from Kaye Scholer LLP, Willkie Farr & Gallagher LLP, Weil, Gotshal & Manges LLP, and Arnold & Porter LLP, who regularly represent parties before the Department of Commerce ("Department"), we file these comments in response to the Department's September 22, 2004 notice of proposed rulemaking proposing to amend the Department's regulation for certification of factual information provided during antidumping and countervailing duty proceedings. *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 69 Fed. Reg. 56,738 (Sept. 22, 2004). These comments are timely filed in accordance with discussions with Department staff. *See* Letter from Kaye Scholer LLP to U.S. Department of Commerce, Docket No. 040722214-4214-01 (Nov. 22, 2004).

We appreciate the opportunity to provide written comments on the proposed regulation, since the adoption of these proposals could have a dramatic impact on the creation of the record and the ability of the Department to conduct cases based upon the fullest possible record. Given the potential implications of the proposal, we believe that it is essential that the Department also schedule a hearing to allow interested parties to engage in a dialog with the Department as it considers what changes, if any, to make to the existing certification regulation.

1. Background

The requirement for the certification of factual information was first established in the antidumping and countervailing duty law by Section 1331 of the Omnibus Trade and Competitiveness Act of 1988. Section 1331 amended then Section 776 of the Tariff Act of 1930 (the "Act"), 19 U.S.C. § 1677 by requiring that:

> Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this subtitle on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

Omnibus Trade and Competitiveness Act of 1988 § 1331, Pub. L. No. 100-418, 102 Stat. 1207 (1988).[1] Shortly after enactment of this provision the Department adopted regulations requiring the currently required certifications for both parties and their counsel or other representatives. [2]

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[1] This statutory provision was subsequently redesignated, without amendment, as Section 782(b) of the Act by Section 231 of the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994).

[2] *See Final Rules and Regulations, Department of Commerce, International Trade Administration*, 54 Fed. Reg. 12,742, 12,745 (March 28, 1989) (adding a new paragraph (i) to section 353.31); *Proposed Rules, Department of Commerce, International Trade Administration*, 61 Fed. Reg. 7308, 7326 (Feb. 27, 1996) (adding paragraph (g) to new section 351.303); *Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. at 27,337-338. The discussion in the Department's notice of final rule adopting the regulation states that the Department's primary concern was to deter frivolous or factually inaccurate antidumping or countervailing duty petitions by domestic interested parties. *Final Rules and Regulations*, 54 Fed. Reg. at 12,745.

The International Trade Commission ("ITC") adopted similar certification requirements. *See* 19 C.F.R. § 207.3(a). These certification requirements (with only minor modifications) have remained in effect in antidumping and countervailing proceedings since 1988.

In 1997, when the Department overhauled its regulations to implement the Uruguay Round Agreements Act, the Department considered possible amendments to its regulation on certifications. The Department determined, however, that no substantive changes were necessary. For example, in response to a proposal that certifications be sworn before an authorized equivalent to a notary public for each submission, the Department stated that:

> The Department believes that such a regulation would not provide substantially greater assurance of completeness and accuracy of submitted information, yet it would further complicate the process of submitting information.

Antidumping Duties; Countervailing Duties, 62 Fed. Reg. 27,296, 27,338 (May 19, 1997).

2. No Changes to the Existing Regulation are Necessary to Implement the Statute's Specified Certification Requirement

The Department's proposed regulation would replace the existing certification of factual information with one imposing a substantially expanded certification requirement on both companies submitting factual information and their legal counsel or other representatives. But unlike the current regulation, the Department's new proposals extend beyond the statutory authority provided in the 1988 Omnibus Trade Act, and thus should be rejected as contrary to the governing statute.

Section 1677m(b) is narrowly drafted. It provides that "[a]ny person providing factual information . . . shall certify that such information is accurate and complete to the best of that person's knowledge." 19 U.S.C. § 1677m(b). The Department does not have the discretion to ignore such a specific statutory formulation by imposing different or additional certification requirements of its own choosing. To the contrary, the statute identifies, with specificity, what is

to be certified – that the "information is accurate and complete to the best of that person's knowledge." The statute also limits the certification obligation to persons providing factual information to the Department, and it imposes no additional testing or due diligence requirement on attorneys or other representatives. The existing regulation closely tracks the statutory language of Section 782(b) of the Act by requiring that a party submitting factual information to the Department certify (i) that he or she has read the submission and (ii) that the information is to the best of that person's knowledge, complete and accurate. *See* 19 C.F.R. § 351.303(g)(1).[3]

The Department nonetheless states its interest in enhancing the existing certification regime, including imposing further obligations on interested parties and counsel not provided for in the statute, because:

> The current language of the certification requirements does not address certain important issues. For example, the current language does not require the certifying official to specify the document or the proceeding for which the certification is submitted, or even the date on which the certification is submitted.

69 Fed. Reg. at 56,738. This reasoning cannot support the wholesale revisions proposed by the Department, which go far beyond the Department's statutory authority.

Moreover, the two "important issues" identified by the Department as supposedly requiring new certification requirements have no relationship to the many new requirements the Department seeks to impose. The existing regulation already requires a certification with every *individual* submission of factual information. Claims that a certification attached to a submission

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[3] The existing regulation also includes a requirement for certification by counsel. Counsel must certify that, based upon the information provided to him or her by the client company or association, counsel has no reason to believe that the submission contains any material misrepresentation or omission of fact. 19 C.F.R. § 351.303(g)(2). The statute's certification requirement is limited to persons "providing factual information to the Department," and it is the client, not counsel, that is the "interested party" and that receives and responds to questionnaires, thereby "providing information."

somehow cannot be tied to that submission are not credible. Documents filed with the Department are dated, and the existing regulations already require that the certification reference the submission to which it is attached, 19 C.F.R § 351.303(g), and that every submission identify the proceeding in which it is filed. 19 C.F.R § 351.303(b)(2). Thus the Department has failed to advance any cogent rationale supporting the wholesale rewrite of the certification requirements. On this basis alone the proposal should not be adopted.

3. The Department's Proposed Changes Also Are Flawed

The imposition of more elaborate certification requirements will not advance the Department's statutory objective of promoting complete and accurate factual submissions, and may actually be counterproductive. While some of the Department's proposals are minor, others would be needlessly burdensome for the companies and/or their counsel or other representative. Still others appear to impose obligations on attorneys that are not authorized by statute and that create the potential for conflict with the existing ethical rules for attorneys set forth in the Rules of Professional Conduct in the District of Columbia and other jurisdictions.

To the extent that the Department's underlying concern is deterring and/or punishing the intentional submission of false or materially misleading factual information, new certification requirements are not the answer. The Department has not identified any instances in which a truthful certification of accuracy under the current regulations has permitted the submission of information that is either false or materially misleading or a material omission of information. Although in rare instances parties may have intentionally submitted false or misleading information (or intentionally withheld material information), in all such cases, by definition, they also submitted certifications that violated the existing certification regulation. Such intentional misconduct does not call into question the adequacy of the existing certification requirements,

but rather constitutes the submission of a false certification. As the Department itself has noted, existing U.S. law, including in particular 18 U.S.C. § 1001, imposes criminal sanctions for knowingly making false statements to the U.S. Government. We believe that existing law provides ample authority to deal with those rare instances in which a party or its counsel are intent on submitting false information. Imposing burdensome new certification requirements, however, would merely punish the innocent.

We have no objections to minor technical modifications to these existing certification requirements, as long as they comport with the statute. For example, the requirements that each certification be separately signed and dated, or that it include an acknowledgment that knowingly making false statements to the U.S. Government is potentially subject to criminal penalties, are not burdensome and appear to mimic the statutory requirements. The substantial proposed expansion of the certification requirements, however, is unnecessary and impermissible. The imposition of due diligence obligations on counsel, and the imposition on counsel of continuing obligations in all instances to report latent errors and omissions in factual submissions, simply are not authorized by statute. In the Department's own words, the imposition of such additional obligations "would not provide substantially greater assurance of completeness and accuracy of submitted information, yet it would further complicate the process of submitting information." *Antidumping Duties*, 62 Fed. Reg. at 27,338.

Specific Comments on Certification Requirements

As noted in the Department's notice of proposed rulemaking, the Department would make several substantive modifications to the existing certifications. The following specific requirements are of concern and should be either modified or eliminated:

A. Company Certifications

- The proposed regulation would require the company official signing the certification to state that he or she had "sole or substantial responsibility for preparation (or supervision of the preparation)" of the submission and has "a reasonable basis to formulate an informed judgment as to the accuracy and completeness of the information contained in this submission."

This new requirement would create serious practical problems. With regard to the requirement of sole, substantial, or supervisory responsibility, given the volume and breadth of information required in antidumping and countervailing duty petitions and other submissions, it is not realistic to expect any one individual to have personal knowledge regarding all of the information to be submitted to the Department, from sales data to accounting information to cost of manufacturing data. Nor is it necessarily the case that any one individual will supervise the preparation of an entire response. In our experience, most entities submitting factual information will designate one person as the responsible official for the submission, and that person's precise role will vary greatly, depending on the organization of the submitting entity as well as the nature of the particular submission. The current regulation, which requires that the certification be signed by "the persons officially responsible for presentation of the factual information," 19 C.F.R. § 351.303(g), reflects this reality. The proposed regulation does not.

Petitions and respondent questionnaire responses are put together with data and other information generally gathered by numerous individuals from a variety of sources, and it is common that such submissions are made by, and draw on information from, multiple affiliated entities. In these circumstances, the additional requirement that the certifying official obtain "a reasonable basis to formulate an informed judgment as to the accuracy and completeness of the information contained in this submission" is equally problematic. It is also vague. It is not clear what would constitute a "reasonable basis" for an informed judgment as to the accuracy and

completeness of the detailed information to be provided to the Department, or how such a basis could be obtained when information is prepared or assembled by other company employees. May the certifying company official rely on the company's internal controls and audit procedures and on other company personnel? If so, then the certification effectively is no different than the existing certification. If the certifier cannot rely on the company's existing records and controls and other company personnel, then what must he or she do to "obtain a reasonable basis to formulate an informed judgement," and how can he or she do so while also undertaking all of the work necessary to prepare the response to the questionnaire while complying with the tight statutory deadlines that govern antidumping and countervailing duty proceedings? Depending on the Department's intent, the proposed new requirement is either unnecessary or unworkable.

- The proposed regulation would require the names of individuals with significant responsibility for preparing specific portions of each submission.

We believe this requirement is both unnecessary and improper. The identification of each person within the company who worked on any part of the submission is needlessly burdensome and offers no additional assurance that the information will be accurate. These individuals will not be certifiers, so nothing is added by including their names on the certification.

Moreover, the phrase "significant responsibility" for preparation of "part or all" of a submission is inherently vague, and, if taken literally, could be read in an extraordinarily broad fashion. In many antidumping or countervailing duty cases, particularly those involving large corporate or governmental respondents, the number of individual company employees that might be said to have "significant" responsibility for the preparation of at least "part" of a questionnaire response or other major submission could run into the hundreds. Antidumping and

countervailing duty petitions, questionnaire responses, and other submissions usually comprise hundreds of pages of narrative information and scores of exhibits, often from multiple sources and entities, with multiple electronic data files involving tens, or even hundreds of thousands of observations. The identification of each individual who has "significant" responsibility for each worksheet, exhibit, data field, or data file would be extraordinarily burdensome and would involve at least dozens, and in some cases hundreds, of individuals. Much of the information provided in an antidumping or countervailing duty response consists of, or is drawn from, underlying business and accounting records. As currently drafted, the Department's regulation could be construed to require, for example, the identification of each person in the company with "significant responsibility" for the preparation of a company's annual financial statements. Given the inherent ambiguity of the proposed regulation, many companies might feel compelled to list hundreds of employees, as well as outside auditors and consultants. Countervailing duty investigations involving government respondents would pose similar concerns.[4] In short, this proposal appears to be inherently and unreasonably burdensome and will not provide any additional assurance of the accuracy of the submission.

- The Department's proposed regulation requires the company to maintain the original certification as part of the company's "official business records" and to have it available for inspection by the Department during the course of verification.

The objective and basis for this proposal are unclear. The Department's regulations already require the certification to be submitted to the Department with any submission of factual

[4] There currently is an inconsistency between the text of the regulation, which refers to a requirement that certifications need to be filed by the "person(s) officially responsible for presentation of the factual information," and the text of the certification itself, which covers a "company certification" to be filed by someone "employed by (COMPANY NAME)," and does not cover submissions by foreign governments. The problems inherent in identifying responsible personnel are even more applicable for government submissions, which often involve personnel operating at multiple agencies and departments, and draw upon statistics gathered from all over the government.

information. Thus, the Department retains copies of all certifications. The company and/or its counsel also retain copies of all submissions, including the certification, in case the Department conducts a verification. What is added by retaining an "original" of a stand-alone certification? Indeed, the certification itself, apart from the submission to which it is attached, is meaningless, as it is a certification *of the submission.* This proposal would appear to do nothing to promote the accuracy and completeness of submissions.

Similarly, the phrase "official business records" is undefined and thus unclear, and adds nothing to the proposed regulation. It should be deleted.

- The Department's proposed regulation provides that a certification is deemed to be in continuing effect, and would require the certifying person to inform the Department, in writing, should he or she subsequently come to "possess knowledge or has reason to know of any material misrepresentation or omission of fact" in either the submission or any previously certified information upon which the submission relies.

This requirement goes well beyond the underlying statutory obligations set forth in Section 782(b) of the Act. To the extent that it purports to impose an affirmative obligation on the specific certifying company official--as distinct from the company as a whole--to notify the Department of possible misrepresentations or omissions contained in previous submissions, this requirement is unreasonable and impractical. As the Department is well aware, companies regularly provide updated information throughout the course of a proceeding, right up until the time of minor corrections at verification, in order to give the Department as complete and accurate a record as possible. The Department's authority to use facts available, including adverse facts available, provides a powerful incentive for companies to voluntarily correct errors or mistakes, even when the corrected information is not favorable to the company. However, individuals employed by companies involved in antidumping and countervailing duty proceedings before the Department are potentially subject to a host of contractual, ethical, and

legal obligations that may limit or preclude entirely their ability to unilaterally provide information to the Department with respect to the companies that employ them. This is of particular concern with companies located in foreign jurisdictions, and thus subject to domestic laws that may differ significantly from U.S. law, and for company officials who may be corporate officers or directors, or who may also be in-house lawyers, accountants, or other professionals.

The Department has no statutory authority to regulate in this manner the conduct of individuals employed by private companies, whether located inside or outside the United States. As was discussed extensively in previous comments regarding the Department's January 26, 2004 notice, the Department's authority to verify information submitted to the Department provides it with ample opportunity to confirm the accuracy of submitted information and to punish, in the form of the use of adverse facts available, those rare companies that fail to provide complete and accurate information. In addition, as the Department notes in its proposed regulations, U.S. law imposes potential criminal sanctions for making intentional false statements to the U.S. Government. *See* 18 U.S.C. § 1001. We are aware of no statutory or other legal basis, however, for the Department to impose affirmative subsequent notification and disclosure obligations of such scope and breadth on individuals employed by companies located in or subject to the laws of foreign jurisdictions and who are involved in antidumping or countervailing duty proceedings. The Department's proposed regulation could be read to apply, for example, even where the individual in question no longer is involved in the company's participation in the antidumping or countervailing duty proceeding, or even when the individual no longer is employed by the company. This requirement in the proposed regulation is unreasonable and unenforceable, and should be eliminated.

B. Certifications by Counsel or Other Representative

- Imposition of a requirement that a representative certification be provided "if the person has legal counsel or another representative."

As a threshold matter, we note that the proposed regulation incorrectly assumes that, whenever a representative or counsel enters an appearance for an interested party, that representative or counsel is fully engaged in all aspects of the proceeding, including the submission of all factual information. Our experience is otherwise. Certainly in the majority of cases in which we are retained, we assist in the preparation of responses containing factual information, but this is not always the case. We may be hired just to copy and file documents. We may be consulted only on discrete issues. We may be hired just to prepare briefs. Thus, the mere fact that an interested party "has legal counsel or another representative," the overbroad words of proposed section 351.303(g),[5] cannot provide a basis to require that counsel or other representative must certify all factual submissions. If counsel is not engaged to assist in the substantive preparation of factual submissions, such counsel cannot be required to sign certifications of accuracy and completeness. (Indeed, this probably explains the difference in the language currently required to be used in the certification by legal counsel or another representative.)

- The Department's proposed regulation requires the company's counsel or other representative to conduct an "inquiry reasonable under the circumstances" as part of his or her certification that the information is accurate and complete.

The Department's proposed rule would require that the certification of completeness and accuracy be based not only on counsel or other representative's knowledge, but also on "an

[5] Although the regulation does not so state, we assume that the Department intended to limit its language to counsel assisting in the particular antidumping or countervailing duty proceeding. Yet, as written – "if the person has legal counsel" – all counsel engaged by the interested party in any matter at all would appear to qualify.

inquiry reasonable under the circumstances." But the statute imposes no such obligation of inquiry, and the Department has no authority to create one itself. Additionally, the proposed requirement is impermissibly vague and burdensome.

Even where counsel have been retained to assist in the preparation of responses containing factual information, when the client is located in distant, not easily accessible locations, it is often necessary for counsel to assist in the preparation of responses to questionnaires or other submissions of factual information based on information transmitted to counsel by email, fax, or courier, without visiting the client's business facilities or independently verifying the factual information to be submitted. Time constraints caused by the strict deadlines for answering questionnaires and the statutory timetable often make independent verification of information by the lawyer or other representative impossible. Even where a lawyer visit would be possible, clients often are unwilling or unable to pay for such visits. In these situations, counsel generally review the data for facial completeness and accuracy, but cannot conduct an independent verification of the data.

Given this context, the phrase "an inquiry reasonable under the circumstances" is inherently ambiguous and provides no guidance to the attorney or other representative being asked to sign the certification. Must counsel perform its own verification? Must counsel review sales invoices, and verify for him or herself the integrity of the company's sales and cost accounting systems and internal controls? To the extent that the Department intends to impose an affirmative obligation on counsel to check information the client wishes to submit, the Department is acting *ultra vires*, without any statutory authority.

Moreover, as a practical matter, imposing such a requirement would greatly increase the cost of parties' participation in trade remedy proceedings and severely limit the ability of lawyers

to represent parties in such proceedings, neither of which is desirable. We believe that the Department's interests are adequately protected by retaining the existing counsel certification requirement.

If the Department nevertheless determines to retain the "reasonable inquiry" requirement as part of the revised counsel certification then, at a minimum, it should clarify that a "reasonable inquiry under the circumstances" can be accomplished through a review of information furnished by the client, and does not require the lawyer or other representatives to visit the client's business location or to otherwise conduct an independent examination of original books and records. Such a limitation on a lawyer's obligation would be similar to that imposed by the Internal Revenue Service ("IRS") on lawyers practicing before it. The IRS' rules of practice for tax practitioners provide as follows in 31 C.F.R §10.34(c):

> *Relying on information furnished by clients*: A practitioner . . . preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client.

The Department should not adopt a more demanding obligation of lawyers representing clients in trade proceedings than that imposed by the Internal Revenue Service.

- The Department's proposed regulation provides that a certification is deemed to be in continuing effect, and would require the counsel or other representative to inform the Department, in writing, should he or she subsequently come to know of a material misrepresentation or omission in either the submission or any previously certified information upon which the submission relies.

The attempt to impose upon an attorney or other representative an unqualified duty to advise the Department when he or she discovers, or has reason to know, that previously submitted information is materially incorrect or incomplete poses serious difficulties and should be abandoned. Such a requirement could be both costly and impractical. Indeed, the requirement could be completely counterproductive, as small companies, without the resources

to hire counsel that can both advise them (sometimes on a very limited basis) in responding to questionnaires and also conduct inquiries into the accuracy of such submissions, might feel compelled to forego counsel altogether.

As an initial matter, the Department has no general statutory authority, either express or implied, to regulate the professional conduct of attorneys or other representatives. Certainly such authority cannot be found in Section 782(b), which, as discussed previously, merely authorizes the Department to require that "persons providing factual information" certify that the information is complete and accurate. Attorneys or other representatives who represent parties in antidumping and countervailing duty proceedings are not "persons providing factual information."

Moreover, the proposed rule would create the potential for conflicts with other rules governing attorneys' obligations before the Department. Attorneys are already subject to detailed rules of professional responsibility imposed by the various states and the District of Columbia. These rules, which vary among jurisdictions, generally already prohibit attorneys from knowingly making false statements or assisting their clients in fraudulent conduct. Under the District of Columbia Rules of Professional Conduct, "in the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client . . . ." D.C. Rules of Professional Conduct Rule 4.1. Under Rule 8.4, conduct "involving dishonesty, fraud, deceit or misrepresentation" is defined as "professional misconduct." "Fraud," in turn, is defined as "conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information." D.C. Rules of Professional Conduct, Terminology.

In addition, Rule 3.3 of the Rules provides that a lawyer who practices before a tribunal, such as the Department, "shall not" knowingly "offer evidence that the lawyer knows to be false . . . ."[6] Rule 3.3 also provides that a lawyer who receives information that a fraud has been perpetuated on the tribunal "shall promptly reveal the fraud to the tribunal unless compliance with this duty would require disclosure of information otherwise protected by Rule 1.6 [attorney-client confidentiality], in which case the lawyer shall promptly call upon the client to rectify the fraud."

In all cases where a company is represented by legal counsel, these rules provide strong protections against lawyers knowingly assisting in the submission of false information by a client. Such conduct by a lawyer is strictly prohibited. In addition, if a lawyer subsequently discovers that a client has submitted false information to the Department, the lawyer is obligated to try to persuade the client to correct the record. Depending upon the facts and circumstances, the lawyer may also take other steps, including withdrawing from the representation, in order to continue to respect attorney-client confidentiality while complying with the governing ethical obligations of candor and truthfulness on the part of the lawyer. The lawyer is not permitted to knowingly continue to build a case upon a false factual foundation. The ethical rules governing attorneys thus provide strong protections against lawyers knowingly assisting their clients in providing materially false or incomplete information to the Department.

The certification set forth in the Department's proposed regulation, however, would, under certain circumstances, be in direct conflict with obligations imposed by the District of Columbia Rules of Professional Conduct. As noted above, Rule 3.3 imposes a duty on an

[6] Lawyers are specifically prohibited from assisting in the submission of fraudulent or misleading information by their clients. *See* D.C. Rules of Professional Conduct Rule 1.2. "A lawyer shall . . . . not assist a client in conduct that the lawyer knows is criminal or fraudulent." *Id.*

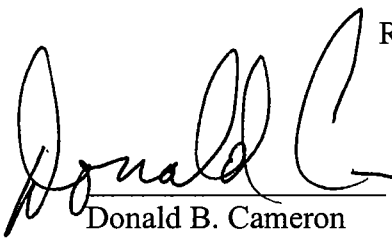
attorney to disclose previous fraud perpetrated on a tribunal, but only when doing so would not violate attorney-client confidentiality. In such cases, Rule 3.3 directs the attorney to call upon the client to rectify the fraud, but does not permit the attorney to disclose the fraud over the objections of the client.

Rule 1.6, which sets forth the basic rule of attorney-client confidentiality, requires lawyers to preserve the confidentiality of information protected by the attorney-client privilege and other information learned during the representation that the client has requested be held in confidence. The rule provides no exception for the disclosure that would be required by the Department's proposed certification rule. A lawyer may, for example, discover during preparation for verification that certain information previously submitted in a questionnaire response omitted reportable sales or materially misstated cost information. In such circumstances the lawyer would be obligated under the District of Columbia Rules of Professional Conduct to strongly advise the client to disclose the misstatement or material omission to the Department. Although there may be other steps to be taken by the lawyer (such as withdrawing entirely from the client's representation), if the lawyer's client declines to correct the previously submitted information and instructs the lawyer not to do so, the lawyer is prohibited from making the disclosure if doing so would reveal information governed by attorney-client confidentiality. As discussed above, the Department has no general statutory or other legal authority to regulate the professional conduct of attorneys. In the absence of such statutory authority, the Department certainly may not attempt to do so in a way that would conflict with existing state-based professional obligations of lawyers. Existing rules of professional responsibility already impose upon attorneys an obligation of candor toward the Department, as toward any other tribunal, and the Department has no need or authority to go

further.[7] The Department's proposed certification requirement is thus to a large extent superfluous, and to the extent it is not superfluous, is in conflict with existing rules of professional responsibility. For these reasons, we strongly urge the Department to abandon this proposed certification requirement.

Please contact us should you have any questions regarding this matter.

Respectfully submitted,



Donald B. Cameron
Julie C. Mendoza
R. Will Planert
Randi Turner
Kaye Scholer LLP
901 15th Street, NW
Washington, D.C. 20005
202 682 3500

/s/
William H. Barringer
Kenneth J. Pierce
Matthew R. Nicely
Willkie Farr and Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238
202 303 1000

/s/
M. Jean Anderson
Stuart M. Rosen
Gregory Husisian
Weil, Gotshal, and Manges LLP
1501 K St. NW, Suite 100
Washington, DC 20005
202 682 7000

/s/
Lawrence A. Schneider
Claire E. Reade
Michael T. Shor
Arnold & Porter LLP
555 12th Street, NW
Washington, D.C. 20004
202 942 5000

[7] Moreover, short of actions rising to the level of criminal conduct under 18 U.S.C. § 1001 as discussed previously, the Department has the ability at any time to refer matters to the D.C. Bar or other appropriate Bar for disciplinary action pursuant to the respective professional conduct rules.